

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MAURICE MICKLING,

Petitioner,

v.

WARDEN TRATE,

Respondent.

No. 1:22-cv-00010-SKO (HC)

ORDER DIRECTING CLERK OF COURT TO
ASSIGN DISTRICT JUDGE TO CASE

FINDINGS AND RECOMMENDATION TO
DENY MOTION FOR DEFAULT

[Doc. 9]

Petitioner is a federal prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On March 10, 2022, Petitioner filed a motion to enter default judgment. (Doc. 9.) Petitioner contends that Respondent failed to file an answer in compliance with the Court's order of January 5, 2022, which had directed Respondent to file an answer within sixty (60) days. Petitioner is incorrect because on March 4, 2022, Respondent requested and was granted an extension of 45 days within which to file an answer. (Docs. 7, 8.) As the deadline to file an answer was extended, Petitioner's motion for default judgment must be dismissed.

The Court notes that even if Respondent had failed to timely file an answer, Petitioner would not be entitled to default. Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1990); see also Bleitner v. Welborn, 15 F.3d 652, 653 (7th Cir. 1994).

ORDER

IT IS HEREBY ORDERED that the Clerk of Court is DIRECTED to assign a District Judge to this case.

RECOMMENDATION

For the foregoing reasons, the Court RECOMMENDS that Petitioner's motion for default judgment be DENIED.

This Findings and Recommendation is submitted to the assigned district judge pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern District of California. Within twenty-one (21) days after being served with a copy, any party may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections shall be served and filed within ten (10) court days (plus three days if served by mail) after service of the objections. The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: **March 14, 2022**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE